IN THE

Supreme Court of the United States

OCTOBER TERM, 1943

No. 433

STATE OF OKLAHOMA,
Plaintiff-Respondent,
against
W. D. LYONS,
Defendant-Appellant.

BRIEF OF AMERICAN CIVIL LIBERTIES UNION, *AMICUS CURIAE*

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Preliminary Statement

The parties herein have granted permission to the American Civil Liberties Union to submit this brief as *amicus curiae*. The American Civil Liberties Union, after a comprehensive study of the record and a consideration of the applicable principles of law, submits that the conviction of the defendant-appellant is in violation of the civil rights of a person accused of crime.

The American Civil Liberties Union is a non-partisan, non-sectarian organization. It has a membership of thousands in all states of the union including Oklahoma. For more than twenty years it has pursued the object stated in its charter, namely, to maintain civil liberties throughout the United States and to take all legitimate action in furtherance thereof. Accordingly, the fundamental rights

of persons, no matter what their race, creed or color have been defended in the courts, and the American Civil Liberties Union has appeared as *amicus curiae* in many cases involving the issues of civil liberties.

The possibility of destruction of the rights of criminal defendants, so carefully protected by a wise judiciary, may well be accomplished by the use of techniques such as those employed in this case. It is the concern that our constitutional guarantees "may be frittered away by arguments so technical and unsubstantial," that has prompted its intervention in the public interest in this case.

The Issues Involved

Defendant-Appellant is a twenty-two year old negro. In December, 1939, in Choctaw County, Oklahoma, a revolting crime was committed. A man, his wife and small child were murdered. The two adults were shot; their bodies mutilated with an axe; and the shack in which they lived set on fire. The undertaker who called with an ambulance to remove the three bodies, had to pour water on them to cool them off sufficiently to enable them to be removed.

Defendant has been convicted on circumstantial evidence of doubtful persuasiveness, but mainly because of an alleged second confession which he made to the Warden of the Oklahoma State Penitentiary in McAlester.

Though a long parade of witnesses testified against defendant, there is no testimony actually connecting the defendant with the murder except this confession. No eye witness linked defendant to the tragedy. The gun was not the property of defendant, but of one Sammie Green. The axe was not the property of the defendant, but of Elmer Rogers, the murdered man. Though de-

fendant was at various times placed near the scene of the tragedy, that fact has no probative value because Fort Towson is a small community.

The trial judge rightly refused to admit the so-called first confession. He held, "The Court finds that the defendant may have been frightened into making the confession that was made here in the Court House by long hours of questioning and placing bones of the purported bodies of the deceased persons on his lap during the questioning" (R. 89). The second confession made on the same day only a few hours later was admitted in evidence by the trial court. Appropriate objection was taken by defendant's attorney "for the reason that it is a denial of the constitutional right of this defendant and of the 14th Amendment of the Constitution of the United States as to due process of law". (R. 92).

It is submitted that the second confession taken on the same day, was tainted with the same illegality as the first. Not only was it almost contemporaneous in time, but one or more of those present when the first confession was extorted from defendant, was present during the second alleged confession. Furthermore, defendant, who had been without sleep for days, was under the same fear of threats and violence when he made the second confession in the penitentiary, as he was when he made the first one, which the court ruled out.

POINT I

The second confession was so close in point of time and circumstance to the first, that it should have been ruled out, for the same reasons which vitiated the first confession and made it inadmissible.

This ignorant negro boy did not have the benefit of counsel when each confession is alleged to have been made. He testified that after his arrest he was beaten on Jefferson Street about a quarter of a mile from the court house (R. 29). His hands were tied behind him with his own belt; he was knocked down and kicked by the officer (R. 30); he was struck across the head with a piece of one inch board about three feet long (R. 30); he was told that he "was going to burn me, kill me by degrees if I didn't confess" (R. 30). His head was bumped against a tree; he was hit in the mouth with the jail house keys; he was beaten with fists; kicked in the stomach and ribs (R. 31); one of the many men present had on cowboy boots and he kicked the skin off defendant's shins (R. 32); his eye was blackened and closed; scalp "busted"; face swollen (R. 34).

Eleven days later he was beaten again (R. 34). A highway patrolman hit him with a blackjack (R. 35). He was kept in the County Attorney's office from 6:30 in the evening until 4:30 o'clock the next morning. At least six or seven officials were present. He was handcuffed to a chair, he was beaten all night, until about 4:30 in the morning (R. 39). They brought a pan full of bones that they said came from those bodies of Mr. and Mrs. Rogers (R. 40). They set them up on his lap. He was asked if he wanted to say his prayers (R. 41). It was as a result of this terrible physical ordeal and the fright induced in

the superstitious mind of this poor ignorant prisoner that the first alleged confession was extorted.

Then he was taken to the scene of the crime. While he was in the highway patrolman's car, he was told he would be taken to the scene of the crime and a big fire made with which they were going to burn him (R. 42). He was threatened with a pick hammer (R. 43). There the officers searched the ashes. Harvey Hawkins had an axe in his hand when the defendant turned around (R. 43). Defendant was accused of putting the axe there. He denied it and was again threatened with the blackjack (R. 44). Defendant states that he had been rabbit shooting that morning and that he used a number 4 shot, 12 gage shell. He was then taken to another place about a quarter or a half a mile southeast. He showed the officers where to find the shells that he was hunting with and they found two shells (R. 45). About 2 o'clock that afternoon he was brought a statement and told to sign it. This constituted the alleged first confession. Then his picture was taken with the officials in the jailhouse yard about 3:30 in the afternoon (R. 48). After that, he was taken to the State Penitentiary. Van Raulston an official present at the first alleged confession was also present when the second alleged confession was made. Defendant was told, "You either answer our questions or get treated like you was down at Hugo". This by Van Raulston, the same man, with the same blackjack which had extorted the first alleged confession. Defendant was "already hurting from that last night beating. I hadn't had any sleep since that Sunday night, it was Tuesday night then" (R. 50). It was then that the alleged second confession was made. He was asked if he was sleepy, and taken where the death cells are (R. 51) near the electric chair (R. 52). The warden told him that

he had sent 39 men to their death in the electric chair (R. 52), and that, "If I don't plead guilty then I would be the 40th one." He was told that he had better plead guilty on the stand or he wouldn't get back alive (p. 136).

The trial court had little difficulty in believing defendant's testimony and refused to admit the first confession. In fact so tainted with fraud and disgraceful behavior was this confession, that the county officials did not even have the temerity to offer it in evidence (R. 90). The County Attorney, who was present throughout the shocking performance, himself asked, "Isn't it true that Vernon Cheatwood had a strap of leather and was tapping you like that all because you refused to answer questions they put to you?" Defendant answered, "That blackjack he had was loaded," to which the County Attorney replied, "How do you know it was loaded (R. 55) • • • Isn't it true that you refused to answer and they struck you on the knee with a piece of leather?" And again the County Attorney queried, "Isn't it true that after they got through hitting you as you say with a strap of leather, and you refused to answer my questions at all times, that I made them stop whipping you and told them to get out of the room and I asked you if you wouldn't talk to me alone, is that right" (R. 56).

Roy Harmon, the sheriff of the County was not too clear as to whether defendant was beaten at the time of the confession. He was asked, "Did you see any of the officers strike him?" His answer was, "I don't remember, if I did" (R. 61). He was asked, "Could it have been possible for some officer to strike him in your presence and you not see him?" His answer was "Could have".

"Q. In your presence? A. I could have not been looking."

When asked whether the officers had blackjacks, his answer was "Well, I don't know, it is kind of customary for them to carry them with them."

> "Q. I mean in their hands? A. I don't remember."
>
> "Q. Can you answer the question yes or no? A. I said if they did, I didn't see them. Because there was a crowd around there." (R. 61)

He admitted that someone could have taken Lyons out of that room and questioned him and if they did, the Sheriff didn't know it. He didn't remember whether there were any threats (R. 64). When asked whether he had helped the defendant, his answer was "I don't think so" (R. 64). He found great difficulty in recognizing his picture with the defendant. He said, "Looks a little like me but there are several fellows here that favor me" (R. 65). When asked whether it looked like the defendant, his answer was, "I can't tell these negroes apart" (R. 65, 66). He was able to point out defendant in the courtroom, but still insisted that the "picture didn't favor him anyway." When asked whether he mentioned to defendant the possibility of a mob doing anything, his answer was, "There was something said about, I believe I am not sure, about the National Guard being here, and I told him I was afraid there might be trouble" (R. 68).

The deputy sheriff, Floyd Brown, testified that Van Bizzell, co-defendant was slapped, and that Cheatwood did it with his open hand (R. 72). And then we have the most naive bit of testimony in the entire case. Floyd Brown, a deputy sheriff was asked if in order to get a confession out of this defendant, they put a pan of bones in his lap (R. 73). He admitted that defendant was told those were the bones of Mr. and Mrs. Rogers. When asked why the pan of bones was put in his lap, his an-

swer was, "I figure it was to get him to thinking about what he did." He admitted the purpose was to get a confession. He was asked whether most colored people are superstitious and afraid of the dead, whether the purpose of putting those bones in his lap was to frighten defendant. His answer, which the trial court undoubtedly took into consideration in ruling out the first confession is a clear indication of the thinking of the law enforcement officers of Choctaw County, Oklahoma. The deputy sheriff answered, "I wouldn't say that was the purpose, but it might help a good bit" (R. 73).

All this evidence has been recapitulated so that it hardly seems necessary to belabor the point that the second confession taken a few hours after the first on the same day was vitiated by the very circumstances which rendered the first confession inadmissible.

The trial court, however, admitted the second confession in the mistaken notion that it was several days, not hours, after the first (R. 231). The defendant had not slept for three days, he had had no rest certainly between the first and the second confession. He had been up all of the night, was then taken to the scene of the crime and finally to the State Penitentiary. Thus, there was a continuous, virtually unbroken incident from the horrible experiences which extorted the first confession, to the obtaining of the second confession. Since Van Raulston, one of the officials present at the first confession was also present and obtained the second confession, it is difficult to understand the trial court's technical differentiation between the first alleged confession and the second. He found that the defendant may have been frightened by long hours of questioning and by placing bones of the purported bodies of the deceased persons on his lap during the questioning, and refused to admit the

first alleged confession (R. 89). Indeed, no reasonable person could have come to any other conclusion. That the court saw a highly technical distinction between the first and the second confession ignores the practical consideration that the two confessions were obtained on the same day, within a few hours of each other, and that both are alike tainted with the intimidation and illegal methods used to obtain them. Defendant later in the afternoon of the 23rd of January, 1940, was suffering from the same ill effects which had produced the first confession early in the morning of the same day.

This Court, always zealous to protect the rights of the poor and downtrodden, had no difficulty in reversing a conviction obtained on a second confession in a similar case,—*Canty* v. *Alabama;* 309 U. S. 629. There the treatment was applied to the prisoner at a police station in Montgomery. He was then carried miles away to Kilby Prison, where he made a second confession purporting to be without direct application of force and in the presence of persons not present in Montgomery.

It is submitted that the courts should scrutinize second confessions with extraordinary care. Theoretical distinctions and gossamer technicalities should not cut down the great principle that an accused should be free from torture in order to render a confession admissible. This Court should not permit the constitutional guarantee to an accused to be weakened and diluted by any subterfuge.

Here the County Attorney did not have the courage to offer the first alleged confession in evidence. As a prosecutor, an officer of the court and representative of the law, his own hands were not clean because of his participation in the revolting inquisition leading to the first confession. It is all too clear that the defendant's mind and heart had been broken at the first shocking

episode. Is it possible that this was done in the hope that the second alleged confession could be procured more readily and with a greater simulation of regularity? How else to explain the necessity to obtain a second confession?

Improper influence by the County authorities having been shown to the satisfaction of the trial court, common sense would indicate an exceedingly strong presumption that such influence continued at least to the end of the same day, to the time of the second "confession".

POINT II

Without the confession improperly received in evidence, the State has woefully failed to make out a case.

The record is voluminous, the number of witnesses paraded before the jury was huge. Yet, when the evidence is examined, it is curious how little the State proved against this negro boy.

We must remember no one testified that he saw defendant shoot, dismember or burn Rogers. Indeed, there was a prison camp near the town of Fort Towson, Oklahoma, and at first the State suspected members thereof and arrested some (R. 179).

The crime was committed with a shot gun not belonging to defendant, but to one Sammie Green and with an axe belonging to the murdered man. No finger prints, foot prints or other evidence is presented linking the defendant with the crime. A very brief resumé of the testimony of each witness bears out the conviction that there is no proof of defendant's guilt other than the confession improperly admitted in evidence.

James Glenn Rogers, eight years old at the time of the trial (13 months after the murder) was sworn appar-

ently without any examination as to his ability to understand the nature of an oath (p. 15). He couldn't tell what kind of a looking person the murderer was (p. 17). He didn't know whether he was a white man or a black man (p. 17). He said, "Well, he blew the light out, and it sounded like he put on some clothes. He went out and set the side of the door afire, then I saw a black hand."

> "Q. Saw a hand? A. A black hand, and then the house was—it was light enough, I could see them go out again. I got the baby and ran off." (R. 17)

Though the light was still burning when the assailant came in, the boy said, "But I didn't look: Yes, because I didn't look what color he was" (R. 18).

G. C. Campbell, who conducted the funeral testified that the lady's body was cut open on the left side, the ribs were split open, she was shot in front and the man's head was mashed in.

L. B. Mills testified that a few hours before the murder he saw defendant carrying something wrapped in a newspaper about a yard long. A little later he saw defendant again with a single barreled shot gun. It looked the same to him as State's Exhibit 3, but he didn't know. Sammie Green testified that about 3:30 that afternoon he saw defendant with his (Green's) gun wrapped in a newspaper. Two days later he traded defendant a little old pocket knife for three red gun shells. Mrs. W. A. Hall sold defendant on the day before the murder a quarter's worth of 12-gauge No. 4 Super-X or expert shells. Hosea Walker saw defendant with something wrapped in a newspaper, about two feet long. He couldn't imagine what it was. Richard Scott saw defendant with a newspaper 18

inches long. Lonzo Brown saw defendant with a shot gun wrapped in some paper. He didn't see it to know, but he though it was a single barreled shot gun. He saw the end of the barrel protruding from the newspaper. Alton Ryder testified that they had some wildcat whiskey which a bunch of the boys disposed of in a few minutes. Defendant brought a gun there, "seems to me". Dr. F. L. Waters testified that there were 100 buckshot in the body. W. A. Hall testified that he didn't see the sale of the shot to defendant though he had sold him some shells 6 or 8 months before. Curtis Thompson saw defendant get a drink that morning. He had a "little package, brown or a newspaper one".

This virtually completes the testimony concerning the commission of the crime. Not one word of that testimony is inconsistent with defendant's story that he was hunting rabbits. The only one who allegedly saw the murderer, the young boy of 6 or 7, does not know what the man looked like, whether black or white. Merely fixing defendant near the scene of the crime proves nothing.

The credibility of the prosecution's witnesses, state and county officials for the most part, may be measured by the following instances. Others have been recited previously.

Jess Dunn, Warden of the Oklahoma State Penitentiary would have the court believe that when he questioned the prisoner, he knew nothing about the first confession. Nor had he heard that he had made a statement (R. 104). This is wholly unbelievable, especially when we remember that Van Raulston, one of those present at the first confession, accompanied the prisoner to the State Penitentiary and was present when the second confession was purported to have been made. The Warden would

not have begun questioning as soon as Lyons reached the Penitentiary if he did not know of the first confession, nor could he have asked all the questions he did if he didn't have the first confession to guide him. If the prisoner had given his own statement, it would not have been necessary to revise it and ask the same thing by question and answer.

Furthermore, the time when the confession was taken is left in grave doubt. The stenographer's minutes show 8:15 (R. 92). Dunn said first that the prisoner came at half past nine, (R. 91) and that it took 20 or 30 minutes for Lyons to tell his story (R. 92). Then the questioning began in front of his secretary (R. 92). Roy Marshall testified that, "It was 10 o'clock or after when we got there."

This much may be inferred. The Warden was interested that convicts at the prison camp under his supervision be removed from suspicion (R. 102). The newspapers condemned the Warden (R. 111). Lyon's conviction would remove that unfavorable publicity against the prison camp.

But the character of the State's evidence is best exemplified by the character of its chief witness, Cheatwood. The County Attorney on cross-examination, asked the defendant, "Isn't it true that Vernon Cheatwood had a strap of leather and was tapping you like that, and because you refused to answer questions they put to you?" (R. 55). Despite this admission Cheatwood glibly denied that he possessed a "negro-beater", a blackjack, or "anything that would be a piece of leather" (R. 178). He denied that he ever tapped defendant on his knees (R. 181).

These disinterested witnesses proved to the contrary: Albany Gipson, an employee of the Webb Hotel, where Cheatwood registered at the time of his investigation of

this defendant, testified that Cheatwood said, "Boy, go up to my room and get me my nigger beater" (R. 256). Gipson went up and brought from Cheatwood's room the thing he called the "nigger beater" (R. 256). It was a blackjack, loaded, heavy on one end and shot in it (R. 256). He brought it back to Cheatwood at the head of the stairs and the latter stated, "this is what I beat the nigger boy's head with" (R. 257).

Leslie Skeen, the day clerk and bookkeeper of the Webb Hotel, testified that Cheatwood, during the investigation of the Rogers murder, told him he had lost his blackjack (R. 258). Cheatwood stated that he used the heavy end to hit them with and he used the other end to slap them with (R. 258). Skeen swore under oath that Cheatwood had asked him to forget what he said about the lost blackjack and further, "If I had had it the night before I would have got it out of him then" (R. 259). It would seem reasonable that these hotel employees would testify favorably to the state government's special investigator, yet that is their uncontradicted evidence.

Mrs. Vernon Colclasure, the sister-in-law of the murdered woman testified that Cheatwood came to the house, took a blackjack from his overcoat pocket, and said that he beat defendant, "from his knees down" (R. 260).

E. O. Colclasure testified that Cheatwood took a blackjack out of his overcoat pocket, "and bucked his right knee up and whammed it two or three times and said, 'I beat that boy last night for, I think, 6 or 7 hours'" (R. 262).

This testimony from the relatives of the murdered persons (certainly not in sympathy with the accused) stands uncontradicted and unchallenged in the record by anyone but Cheatwood. The entire case against the defendant may be measured by the testimony of Cheatwood. Obviously, the State officials were seeking to shield their fellow-officer.

Conclusion

This case presents a flagrant abuse of the fundamental rights of a person accused of crime. The entire evidence of the State is founded upon a second alleged confession made a few hours after a first confession, which was extorted from defendant under such circumstances that the trial court ruled the first confession out of the evidence.

This poor negro boy was convicted of murder on a record bare of any evidence against him except an alleged confession. In our opinion the case will always be recalled as the "pan of bones" case. This is a new method to pry a confession out of superstitious, illiterate, downtrodden humanity. That this youth was frightened out of his wits by the pan of bones may well be imagined. A new weapon has been added to the torture rack.

We submit and venture the hope that this Court will place its stamp of stern disapproval upon any such stratagem used by public officials to ensnare the ignorant and the helpless, and admonish them that their ingenuity would be better employed in devising legitimate methods for apprehending the guilty.

It is respectfully submitted that the judgment of conviction should be reversed.

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SUPREME COURT OF THE UNITED STATES.

No. 433.—October Term, 1943.

W. D. Lyons, Petitioner, vs. The State of Oklahoma. } On Writ of Certiorari to the Criminal Court of Appeals of the State of Oklahoma.

[June 5, 1944.]

Mr. Justice Reed delivered the opinion of the Court.

This writ brings to this Court for review a conviction obtained with the aid of a confession which furnished, if voluntary, material evidence to support the conviction. As the questioned confession followed a previous confession which was given on the same day and which was admittedly involuntary,[1] the issue is the voluntary character of the second confession under the circumstances which existed at the time and place of its signature and, particularly, because of the alleged continued influence of the unlawful inducements which vitiated the prior confession.

The petitioner was convicted in the state district court of Choctaw County, Oklahoma, on an information charging him and another with the crime of murder. The jury fixed his punishment at life imprisonment. The conviction was affirmed by the Criminal Court of Appeals, 75 Okl. Cr. ——, 138 P. 2d 142, rehearing 140 P. 2d 248, and this Court granted certiorari, 320 U. S. 732, upon the petitioner's representation that there had been admitted against him an involuntary confession procured under circumstances which made its use in evidence a violation of his rights under the due process clause of the Fourteenth Amendment.[2]

1. Whether or not the other evidence in the record is sufficient to justify the general verdict of guilty is not necessary to consider. The confession was introduced over defendant's objection. If such admission of this confession denied a constitutional right to defendant the error requires reversal. Bram v. United States, 168 U. S. 532, 540-42. Cf. Stromberg v. California, 283 U. S. 359, 367, 368; Williams v. State of North Carolina, 317 U. S. 287, 291, 292.

2 In petitioner's brief a claim is made that Oklahoma denied to him the equal protection of the laws guaranteed by the Fourteenth Amendment. Apparently petitioner relies upon his undue detention without preliminary examination, which was in violation of the state criminal procedure as a denial by Oklahoma of equal protection of the law. But the effect of the mere denial of a prompt examining trial is a matter of state, not of federal, law. To refuse this is not a denial of equal protection under the Fourteenth Amendment although it is a fact for consideration on an allegation that a confession used at the trial was coerced. Cf. McNabb v. United States, 318 U. S. 332, 340; United States v. Mitchell, Nos. 514-515, October Term 1943, decided April 24, 1944.

Prior to Sunday, December 31, 1939, Elmer Rogers lived with his wife and three small sons in a tenant house situated a short distance northwest of Fort Towson, Choctaw County, Oklahoma. Late in the evening of that day Mr. and Mrs. Rogers and a four year old son Elvie were murdered at their home and the house was burned to conceal the crime.

Suspicion was directed toward the petitioner Lyons and a confederate, Van Bizzell. On January 11, 1940, Lyons was arrested by a special policeman and another officer whose exact official status is not disclosed by the record. The first formal charge that appears is at Lyons' hearing before a magistrate on January 27, 1940. Immediately after his arrest there was an interrogation of about two hours at the jail. After he had been in jail eleven days he was again questioned, this time in the county prosecutor's office. This interrogation began about six-thirty in the evening, and on the following morning between two and four produced a confession. This questioning is the basis of the objection to the introduction as evidence of a second confession which was obtained later in the day at the state penitentiary at McAlester by Warden Jess Dunn and introduced in evidence at the trial. There was also a third confession, oral, which was admitted on the trial without objection by petitioner. This was given to a guard at the penitentiary two days after the second. Only the petitioner, police, prosecuting and penitentiary officials were present at any of these interrogations, except that a private citizen who drove the car that brought Lyons to McAlester witnessed this second confession.

Lyons is married and was twenty-one or two years of age at the time of the arrest. The extent of his education or his occupation does not appear. He signed the second confession. From the transcript of his evidence, there is no indication of a subnormal intelligence. He had served two terms in the penitentiary —one for chicken stealing and one for burglary. Apparently he lived with various relatives.

While petitioner was competently represented before and at the trial, counsel was not supplied him until after his preliminary examination, which was subsequent to the confessions. His wife and family visited him between his arrest and the first confession. There is testimony by Lyons of physical abuse by the police officers at the time of his arrest and first interrogation on January 11th. His sister visited him in jail shortly afterwards

and testified as to marks of violence on his body and a blackened eye. Lyons says that this violence was accompanied by threats of further harm unless he confessed. This evidence was denied in toto by officers who were said to have participated.

Eleven days later the second interrogation occurred. Again the evidence of assault is conflicting. Eleven or twelve officials were in and out of the prosecutor's small office during the night. Lyons says that he again suffered assault. Denials of violence were made by all the participants accused by Lyons except the county attorney, his assistant, the jailer and a highway patrolman. Disinterested witnesses testified to statements by an investigator which tended to implicate that officer in the use of force, and the prosecutor in cross-examination used language which gave color to defendant's charge. It is not disputed that the inquiry continued until two-thirty in the morning before an oral confession was obtained and that a pan of the victims' bones was placed in Lyon's lap by his interrogators to bring about his confession. As the confession obtained at this time was not offered in evidence, the only bearing these events have here is their tendency to show that the later confession at McAlester was involuntary.

After the oral confession in the early morning hours of January 23, Lyons was taken to the scene of the crime and subjected to further questioning about the instruments which were used to commit the murders. He was returned to the jail about eight-thirty A.M. and left there until early afternoon. After that the prisoner was taken to a nearby town of Antlers, Oklahoma. Later in the day a deputy sheriff and a private citizen took the petitioner to the penitentiary. There, sometime between eight and eleven o'clock on that same evening, the petitioner signed the second confession.

When the confession which was given at the penitentiary was offered, objection was made on the ground that force was practiced to secure it and that even if no force was then practiced, the fear instilled by the prisoner's former treatment at Hugo on his first and second interrogations continued sufficiently coercive in its effect to require the rejection of the second confession.

The judge in accordance with Oklahoma practice and, after hearing evidence from the prosecution and the defense in the absence of the jury, first passed favorably upon its admissibility as a matter of law, *Lyons* v. *State*, 138 P. 2d 142, 163; cf. *McNabb* v. *United States*, 318 U. S. 332, 338, n. 5, and then, after witnesses

testified before the jury as to the voluntary character of the confession, submitted the guilt or innocence of the defendant to the jury under a full instruction, approved by the Criminal Court of Appeals, to the effect that voluntary confessions are admissible against the person making them but are to be "carefully scrutinized and received with great caution" by the jury and rejected if obtained by punishment, intimidation or threats. It was added that the mere fact that a confession was made in answer to inquiries "while under arrest or in custody" does not prevent consideration of the evidence if made "freely and voluntarily." The instruction did not specifically cover the defendant's contention, embodied in a requested instruction, that the second confession sprang from the fear engendered by the treatment he had received at Hugo.

The mere questioning of a suspect while in the custody of police officers is not prohibited either as a matter of common law or due process. *Lisenba* v. *California*, 314 U. S. 219, 239-241; *Wan* v. *United States*, 266 U. S. 1, 14. The question of how specific an instruction in a state court must be upon the involuntary character of a confession is, as a matter of procedure or practice, solely for the courts of the state. When the state-approved instruction fairly raises the question of whether or not the challenged confession was voluntary, as this instruction did, the requirements of due process, under the Fourteenth Amendment, are satisfied and this Court will not require a modification of local practice to meet views that it might have as to the advantages of concreteness. The instruction given satisfies the legal requirements of the State of Oklahoma as to the particularity with which issues must be presented to its juries, *Lyons* v. *State*, 138 P. 2d 142, 164, and in view of the scope of that instruction, it was sufficient to preclude any claim of violation of the Fourteenth Amendment.

The federal question presented is whether the second confession was given under such circumstances that its use as evidence at the trial constitutes a violation of the due process clause of the Fourteenth Amendment, which requires that state criminal proceedings "shall be consistent with the fundamental principles of liberty and justice." *Lisenba* v. *Louisiana*, 272 U. S. 312, 316; *Mooney* v. *Holohan*, 294 U. S. 103, 112; *Buchalter* v. *New York*, 319 U. S. 427, 429.

No formula to determine this question by its application to the facts of a given case can be devised. *Hopt* v. *Utah*, 110 U. S. 574,

583; *Betts* v. *Brady*, 316 U. S. 455, 462. Here improper methods were used to obtain a confession, but that confession was not used at the trial. Later, in another place and with different persons present, the accused again told the facts of the crime. Involuntary confessions, of course, may be given either simultaneously with or subsequently to unlawful pressures, force or threats. The question of whether those confessions subsequently given are themselves voluntary depends on the inferences as to the continuing effect of the coercive practices which may fairly be drawn from the surrounding circumstances. *Lisenba* v. *California*, 314 U. S. 219, 240. The voluntary or involuntary character of a confession is determined by a conclusion as to whether the accused, at the time he confesses, is in possession of "mental freedom" to confess to or deny a suspected participation in a crime. *Ashcraft* v. *State of Tennessee*, 321 U. S. —, No. 391, October Term 1943, decided May 1, 1944, slip opinion, p. 8; *Hysler* v. *Florida*, 315 U. S. 411, 413.

When conceded facts exist which are irreconcilable with such mental freedom, regardless of the contrary conclusions of the triers of fact, whether judge or jury, this Court cannot avoid responsibility for such injustice by leaving the burden of adjudication solely in other hands. But where there is a dispute as to whether the acts which are charged to be coercive actually occurred, or where different inferences may fairly be drawn from admitted facts, the trial judge and the jury are not only in a better position to appraise the truth or falsity of the defendant's assertions from the demeanor of the witnesses but the legal duty is upon them to make the decision. *Lisenba* v. *California*, *supra*, p. 238.

Review here deals with circumstances which require examination into the possibility as to whether the judge and jury in the trial court could reasonably conclude that the McAlester confession was voluntary. The fact that there is evidence which would justify a contrary conclusion is immaterial. To triers of fact is left the determination of the truth or error of the testimony of prisoner and official alike. It is beyond question that if the triers of fact accepted as true the evidence of the immediate events at McAlester, which were detailed by Warden Dunn and the other witnesses, the verdict would be that the confession was voluntary, so that the petitioner's case rests upon the theory that the McAlester confession was the unavoidable outgrowth of the events at Hugo.

The Fourteenth Amendment does not protect one who has admitted his guilt because of forbidden inducements against the use at trial of his subsequent confessions under all possible circumstances. The admissibility of the later confession depends upon the same test—is it voluntary. Of course the fact that the earlier statement was obtained from the prisoner by coercion is to be considered in appraising the character of the later confession. The effect of earlier abuse may be so clear as to forbid any other inference than that it dominated the mind of the accused to such an extent that the later confession is involuntary. If the relation between the earlier and later confession is not so close that one must say the facts of one control the character of the other, the inference is one for the triers of fact and their conclusion, in such an uncertain situation, that the confession should be admitted as voluntary, cannot be a denial of due process. *Canty* v. *Alabama*, 309 U. S. 629, cannot be said to go further than to hold that the admission of confessions obtained by acts of oppression is sufficient to require a reversal of a state conviction by this Court. Our judgment there relied solely upon *Chambers* v. *Florida*, 309 U. S. 227. The Oklahoma Criminal Court of Appeals in the present case decided that the evidence would justify a determination that the effect of a prior coercion was dissipated before the second confession and we agree.

Petitioner suggests a presumption that earlier abuses render subsequent confessions involuntary unless there is clear and definite evidence to overcome the presumption. We need not analyze this contention further than to say that in this case there is evidence for the state which, if believed, would make it abundantly clear that the events at Hugo did not bring about the confession at McAlester.

In our view, the earlier events at Hugo do not lead unescapably to the conclusion that the later McAlester confession was brought about by the earlier mistreatments. The McAlester confession was separated from the early morning statement by a full twelve hours. It followed the prisoner's transfer from the control of the sheriff's force to that of the warden. One person who had been present during a part of the time while the Hugo interrogation was in progress was present at McAlester, it is true, but he was not among those charged with abusing Lyons during the questioning at Hugo. There was evidence from others present that Lyons readily confessed without any show of force or threats within a very short time of his surrender to Warden Dunn and

after being warned by Dunn that anything he might say would be used against him and that he should not "make a statement unless he voluntarily wanted to." Lyons, as a former inmate of the institution, was acquainted with the warden. The petitioner testified to nothing in the past that would indicate any reason for him to fear mistreatment there. The fact that Lyons, a few days later, frankly admitted the killings to a sergeant of the prison guard, a former acquaintance from his own locality, under circumstances free of coercion suggests strongly that the petitioner had concluded that it was wise to make a clean breast of his guilt and that his confession to Dunn was voluntary. The answers to the warden's questions, as transcribed by a prison stenographer, contain statements correcting and supplementing the questioner's information and do not appear to be mere supine attempts to give the desired response to leading questions.

The Fourteenth Amendment is a protection against criminal trials in state courts conducted in such a manner as amounts to a disregard of "that fundamental fairness essential to the very concept of justice," and in a way that "necessarily prevents a fair trial." *Lisenba* v. *California*, 314 U. S. 219, 236. A coerced confession is offensive to basic standards of justice, not because the victim has a legal grievance against the police, but because declarations procured by torture are not premises from which a civilized forum will infer guilt. The Fourteenth Amendment does not provide review of mere error in jury verdicts, even though the error concerns the voluntary character of a confession. We cannot say that an inference of guilt based in part upon Lyons' McAlester confession is so illogical and unreasonable as to deny the petitioner a fair trial.

Affirmed.

Mr. Justice DOUGLAS concurs in the result.

Mr. Justice RUTLEDGE dissents.

Mr. Justice MURPHY, dissenting.

This flagrant abuse by a state of the rights of an American citizen accused of murder ought not to be approved. The Fifth Amendment prohibits the federal government from convicting a defendant on evidence that he was compelled to give against himself. *Bram* v. *United States*, 168 U. S. 532. Decisions of this Court in effect have held that the Fourteenth Amendment makes this prohibition applicable to the states. *Chambers* v.

Florida, 309 U. S. 227; *Canty* v. *Alabama*, 309 U. S. 629; *Lisenba* v. *California*, 314 U. S. 219; *Ashcraft* v. *Tennessee*, No. 391, decided May 1, 1944. Cf. Green, "Liberty Under the Fourteenth Amendment," 27 Wash. Univ. L. Q. 497, 533. It is our duty to apply that constitutional prohibition in this case.

Even though approximately twelve hours intervened between the two confessions and even assuming that there was no violence surrounding the second confession, it is inconceivable under these circumstances that the second confession was free from the coercive atmosphere that admittedly impregnated the first one. The whole confession technique used here constituted one single, continuing transaction. To conclude that the brutality inflicted at the time of the first confession suddenly lost all of its effect in the short space of twelve hours is to close one's eyes to the realities of human nature. An individual does not that easily forget the type of torture that accompanied petitioner's previous refusal to confess, nor does a person like petitioner so quickly recover from the gruesome effects of having had a pan of human bones placed on his knees in order to force incriminating testimony from him. Cf. *State* v. *Ellis*, 294 Mo. 269; *Fisher* v. *State*, 145 Miss. 116; *Reason* v. *State*, 94 Miss. 290; *Whitley* v. *State*, 78 Miss. 255; *State* v. *Wood*, 122 La. 1014. Moreover, the trial judge refused petitioner's request that the jury be charged that the second confession was not free and voluntary if it was obtained while petitioner was still suffering from the inhuman treatment he had previously received. Thus it cannot be said that we are confronted with a finding by the trier of facts that the coercive effect of the prior brutality had completely worn off by the time the second confession was signed.

Presumably, therefore, this decision means that state officers are free to force a confession from an individual by ruthless methods, knowing full well that they dare not use such a confession at the trial, and then, as a part of the same continuing transaction and before the effects of the coercion can fairly be said to have completely worn off, procure another confession without any immediate violence being inflicted. The admission of such a tainted confession does not accord with the Fourteenth Amendment's command that a state shall not convict a defendant on evidence that he was compelled to give against himself. *Chambers* v. *Florida*, *supra*; *Canty* v. *Alabama*, *supra*; *Lisenba* v. *California*, *supra*; *Ashcraft* v. *Tennessee*, *supra*.

Mr. Justice BLACK concurs in this opinion.